

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Violent Television Programming) MB Docket No. 04-261
And Its Impact on Children)

COMMENTS OF
THE CENTER FOR CREATIVE VOICES IN MEDIA,
THE CAUCUS FOR TELEVISION
PRODUCERS, WRITERS & DIRECTORS,
And
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I. SUMMARY

Like many Americans, we are concerned about the question of whether violence on television has an impact on children. We support the Commission's inquiry into the question of whether violence on television actually causes harm to children. We are troubled, however, about what actions the Commission will take if it conclusively proves that violent content on television does indeed harm America's children.

As creative artists, we favor the freest possible expression over our public's airwaves. We are alarmed that the Commission's NOI overly emphasizes a regulatory approach that favors censoring television programming, such as the wrongly named "safe harbor," while giving far less consideration to actions that would not restrict Constitutionally-protected free speech and expression. Censorship should always be a last resort, not a first resort.

The experience of creative artists with the Commission's indecency regulations vividly illustrates the problem of government censorship of program content and clearly demonstrates that our concerns are not hypothetical or far-fetched. There are numerous well-documented instances of television producers and broadcast stations altering seemingly unobjectionable and inoffensive creative content to avoid any possibility of running afoul of the Commission's opaque new standards. Even the producers of the acclaimed PBS series "Masterpiece Theater" feel obliged to water down that highly-respected show's language for fear of an FCC enforcement action.

New rules on violent content, in combination with the new rules on indecency, will chill an even greater amount of free and appropriate expression. This "when in doubt, cut it out" self-censorship effect is real, it is pervasive, and it is contrary to the free expression rights and interests of not only America's creative artists, but the American audience.

We understand that many believe regulation of violent content on television is necessary to protect – and in the best interests of -- America's children. But it is not in the best interests of America's children to "protect" them from expression that is itself protected by the First Amendment -- unobjectionable and appropriate creative works that are challenging, controversial, original, important, and, yes, occasionally violent.

We propose several ways that the Commission can educate and empower America's parents and consumers to deal with the problem of violent television content. These Constitutionally-friendly efforts can start immediately. We urge the Commission to try them as a first resort instead of censorship.

II. INTRODUCTION

The Center for Creative Voices in Media (CCVM) is a nonpartisan, nonprofit 501(c)(3) dedicated to preserving in America's media the original, independent, and diverse creative voices that enrich our nation's culture and safeguard its democracy. CCVM educates policy makers, the press, and the public on the need to promote an open, diverse, and vibrant American media environment for the benefit of not only creative artists, but also the American public. Many Oscar, Emmy, Peabody, Tony, and other creative award winners are members of CCVM's Board of Advisors. Under its former name, Center for the Creative Community (CCC), CCVM actively participated in the 2002 Biennial media ownership proceeding, filing Comments, Comments on the Initial Regulatory Flexibility Analysis, Reply Comments, and *ex parte* filings.¹

The Caucus for Television Producers, Writers & Directors provides a forum for the best and the brightest creative talent in Hollywood to network together as the “creative conscience” of the Television industry. The Caucus believes all involved in the creation of television programming must recognize their primary responsibility to the viewing public and strive to elevate program quality to better serve that public. It stands

¹ Comments of Center for the Creative Community, *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets*, MB Docket No. 02-277, January 2, 2003 (CCC 2002 Biennial Comments); Comments on the Initial Regulatory Flexibility Analysis, MB Docket No. 02-277, January 2, 2003; Reply Comments of Center for the Creative Community, MB Docket No. 02-277, February 3, 2003; Testimony of Jonathan Rintels, Executive Director of CCC at FCC En Banc Hearing, Richmond, VA, February 27, 2003; *Ex Parte* submissions, MB Docket No. 02-277, filed April 14, 2003 (2), April 18, 2003, May 14, 2003.

for freedom of expression in television programming and is, therefore, opposed to unreasonable and unwarranted intrusion into television content by government or by special interest groups. Its membership includes many of the most outstanding and honored producers, writers, and directors in the television business.²

Peggy Charren founded Action for Children's Television (ACT) in 1968, which advocated for higher quality, less commercialized children's television programming and fought censorship. Ms. Charren was awarded the Presidential Medal of Freedom in 1995, a Peabody Award in 1992 and an Emmy in 1988. She has been celebrated for her pioneer work on behalf of the world's children by the American Academy of Pediatrics, among other groups. She is author, or co-author, of *The TV-Smart Book for Kids; Television, Children and the Constitutional Bicentennial*; and *Changing Channels: Living (Sensibly) with Television*. She is a member of CCVM's Board of Advisors.

In a filing we believe is pertinent to this proceeding, CCVM and Ms. Charren filed, in the form of a letter to Chairman Michael K. Powell, a Comment in the "GOLDEN GLOBE AWARDS" proceeding concerning the Commission's regrettable decision to levy fines for indecent programming in that case, and the "chilling effect" that decision has had on the creation of television programming.³

² Additional information on The Caucus, its mission, and its membership is available on its website, www.caucus.org.

³ Letter to the Honorable Michael K. Powell, *In the Matter of Complaints Against Various Broadcast Licensees Regarding Their Airing Of The "Golden Globe Awards" Program -- File No. EB-03-IH-0110*, dated May 11, 2004. http://www.creativevoices.us/cgi-upload/news/news_article/9957e96174_FCCIndecencyFiling051104.PDF

CCVM, the Caucus, and Ms. Charren share the concerns of many Americans about the question of whether violence on television has an impact on children. After all, in addition to our lives as professional creators of media, many of us are parents and/or grandparents and therefore are extremely concerned on a personal level with the welfare of children -- and not just our own children, but all the children in our national community. Therefore, we support the efforts of the Commission and the Congress to inquire further into this vitally important topic. We look forward to playing a constructive role as the Commission grapples with this difficult issue.

To us, the question is not whether the issue of violence in television should be discussed and addressed. We believe it should. Rather, the question is how should it be addressed? By whom? And what methods should be used to address it?

As creative artists, we favor the freest possible expression over our public's airwaves. Regrettably, as we noted in our letter to Chairman Powell,⁴ recent decisions by the Commission regarding indecency have significantly restricted and "chilled" free expression that is unobjectionable and, therefore, Constitutionally-protected. The unintended consequence of the Commission's substantially broadened, vague, and unpredictable new indecency rules is extreme self-censorship by creative artists, producers, broadcast networks, and local affiliates who are all unsure what the new "rules" are and don't want to risk finding out in a Commission enforcement action.

Moreover, while the Commission states in these indecency proceedings that it is acting on behalf of -- and to protect -- America's children, often the speech and programming that American children will now never see as the result of the

⁴ Id.

Commission's actions is not only not harmful, it is positively beneficial to children.

Indeed, the speech that is lost as a result of the Commission's actions may be the very speech and programming that parents want their children to receive from television.

We believe the Commission's recent actions on indecency have ultimately done a disservice to the American public, infringing on its Constitutional right to view the freest possible flow of information that is not obscene or indecent.

Therefore, we are extremely concerned about the Commission's ultimate actions in this proceeding because, as the Commission notes, its indecency rules may provide a "starting point" for the way it chooses to deal with the issue of violence on television.

The answer to the question of how to deal with violence on television involves the most basic issues of free speech and expression, not only for creative artists, but for the entirety of the American viewing public. Therefore, the Commission must answer that question with the utmost sensitivity to the serious First Amendment issues that come into play whenever the government considers the possible regulation of speech. We believe it failed in its indecency decisions to act with such sensitivity, and ask it to do so in this proceeding.

III. IS THERE A PROBLEM WITH VIOLENCE ON TELEVISION?

We are not social scientists. We do not claim to judge the validity – or lack of validity -- of the research cited by the Commission in its NOI. We simply note, as the Commission itself does, that it must answer such difficult questions as:

- What constitutes an "incidence of violence" on television?

- What are the effects of those incidences on children, if any? If there are effects, does television cause those effects or is there merely a correlation?
- Are there positive as well as detrimental effects of those incidences of violence?
- How do we qualitatively define “excessive violence” or “gratuitous violence” so that those terms apply only to the specific incidents of violence which are harmful to children, while preserving non-objectionable content and programming?
- Is there a need for further regulation or legislation?

As the Commission discusses in the NOI, there seems to be little consensus on how best to answer these questions. Yet, they must be answered so that the resulting actions of the Commission, if any, amount to the least restrictive alternative in their impact on the public’s Constitutional right to free speech and expression.

There is little doubt that what’s on television may influence society. But there is no doubt that society influences everything that is on television. If there is too much violence on television, the reason may be because there is too much violence in our society. While children may be exposed to violence from watching television, they are also exposed to violence in their lives away from television. They may observe domestic abuse, or be exposed to the violence of gangs and war. They may read the news of a violent world on the Internet or in a newspaper. News and music on the radio, CDs and DVDs, films, live entertainment, sports, video games – all of these may be accessible to children and may contain or describe or even advocate violence. Quite frankly, violence is everywhere in our society.

Thus, to single out violence on television as the cause of violence in children seems unjustified. Obviously, television presents an easy target. Lots of people – including children – watch it. But it may be that efforts to deal with violence on

television, while certainly easier than addressing the other real causes of social violence, will ultimately do nothing to alleviate that violence. Indeed, by diverting attention and resources away from the real root causes of violence in our society, these efforts might ultimately exacerbate the very violence in our society they seek to reduce.

We should be cognizant that there is another developed western society that gets almost exactly the same media that we get in the U.S., but has a fraction of the social violence. That country is Canada. Yet the violence in Canada's media, much of which is made in the U.S., doesn't seem to cause social violence or harm its children. Before we decide to regulate, perhaps we should more carefully study the reasons why two different societies that watch similar television have such a difference in the amount of violence in their societies? We might well find that violence on television is not a real cause of violence in American society, since it does not appear to cause violence in Canadian society.

The point is that before the Commission takes action to address the issue of violence on television, it must first determine that violence on television is in fact harming our children. It must not prejudge this issue. Rather, it must document this crucial causal connection using the very best scholarship, studies, data, and other evidence available. It must also determine what kind of violence is causing the harm and how best to define that violence, so as to preserve non-objectionable content and programming. If evidence is not yet available to answer this critical threshold question of causation, then the FCC should commission further studies. Because if the Commission cannot first prove conclusively that violence on television causes social violence or harm to our nation's children, then there is no basis for it to regulate program content.

IV. IF THE COMMISSION PROVES CONCLUSIVELY THAT VIOLENCE ON TELEVISION HARMS CHILDREN AND SOCIETY, WHAT ACTIONS SHOULD IT TAKE, IF ANY?

If the Commission conclusively proves that violence on television harms children and society, then it must decide what actions to take, if any. In the Commission's NOI, it asks, "If the TV Parental Guidelines and V-chip are not adequate to protect children from any identifiable dangers of exposure to media violence, what other mechanisms are available?"⁵

Unfortunately, the Commission then fully discusses only one mechanism available to it, titling this section: "Possible New Regulatory Solution: 'Safe Harbor'."⁶ "Safe Harbor" is a misnomer. Of all the possible mechanisms to deal with violent programming on television, "safe harbor" is the most unsafe. "Safe harbor" requires the Commission to regulate the content of television programming. It puts the Commission in the censorship business.

We believe there are many far "safer" mechanisms to deal with the problem of violence on television than the regrettably mis-named "safe harbor," or any other Constitutionally-suspect Commission regulation of program content. We will discuss these mechanisms below.

⁵ *NOI*, Section E, p. 9.

⁶ *Id.*

COMMISSION REGULATION OF PROGRAM CONTENT IS NOT THE SOLUTION TO THE PROBLEM OF VIOLENCE IN TELEVISION

Let us be clear: “Safe Harbor” requires the Commission to regulate program content. And it will be a far more onerous, heavy-handed regulation of content than is required by the indecency rules, even in their new, broad, and vague iteration. As we noted above, the Commission will have to define “excessive violence” or “gratuitous violence” so that those terms apply only to the specific incidents of violence which are harmful to children, while preserving non-objectionable content and programming.

Otherwise, the Commission will be un-constitutionally regulating protected speech.

As the Commission’s questions in the NOI demonstrate, it faces a daunting and probably unsolvable problem of defining “excessive” or “gratuitous violence” so that those terms only encompass violence that is actually harmful to children.

An example of the problems inherent in defining “excessive violence” on television is deciding exactly what violence we’re talking about? Televised images of hijacked planes flying into the World Trade Towers, bloody scenes of war, atrocities such the display of mutilated American corpses in Iraq and terrorists preparing to behead their hostages, pictures of torture from inside Abu Ghraib prison – these are the violent television images from the past few years that are seared into the public’s collective consciousness. Yet, Americans and their children saw all of these images on the television news, not on entertainment programming. Would the Commission act to restrict the ability of the American public to view on our six o’clock news these abominably violent, yet newsworthy and important images?

Censoring news would be clearly unconstitutional. Yet, assuming the Commission does not restrict the “real-world” violence shown on the television news at six, which can be watched by children of all ages, does it make sense to restrict a less violent “entertainment” program on the air at eight or nine o’clock?

And, if the Commission does not regulate the violent content of the news, should it regulate the violent content of the primetime shows created by the network news divisions such as 60 Minutes, 20/20, and Dateline NBC? If the answer is No, because they are news programs, then does it make sense for the Commission to regulate the lesser fictional violence on an entertainment show on the air at the very same time as one of these news magazines, but on a different, competing channel?

These are just a few of the problems the Commission will face if it decides to embark on the road of regulating program content via “safe harbor” or otherwise. The Commission itself in its NOI noted many other problems.

What the Commission did not focus on in its NOI, but is of overwhelming concern to both creative artists and the American public, is the chilling effect that Commission regulation of program content has on the ability of creative artists to produce and perform challenging, controversial, original, and important works.

The experience of creative artists with the Commission’s indecency regulations vividly illustrates the problem and clearly demonstrates that these concerns are not hypothetical or far-fetched. There are numerous well-documented instances of television producers and broadcast stations altering seemingly unobjectionable and inoffensive creative content to avoid any possibility of running afoul of the Commission’s opaque

new standards.⁷ Even the producers of the acclaimed PBS series “Masterpiece Theater” feel obliged to water down that highly-respected show’s language for fear of an FCC enforcement action.⁸ New rules on violent content, in combination with the new rules on indecency, will chill even more free and appropriate expression. This “when in doubt, cut it out”⁹ effect is real, it is pervasive, and it is contrary to the free expression rights and interests of not only America’s creative artists, but the American audience.

We understand that many within and without the Commission believe that the regulation of violent content on television is necessary to protect – and in the best interests of -- America’s children. We sympathize with this goal. As we noted above, many of us are parents, grandparents, or both. And below, we will suggest other alternatives to Commission regulation of free speech and expression that we believe will protect America’s children from excessive violence on television.

But government censorship is not the way to protect children from inappropriate television. The right to express what some consider objectionable speech is the price Americans pay for freedom of speech and we cannot afford to risk losing that freedom. It is not in the best interests of America’s children to “protect” them from expression that is itself protected by the First Amendment -- unobjectionable and appropriate creative works that are challenging, controversial, original, important, and, yes, occasionally violent. Unfortunately, these protected and salutary works – the very works so many parents want their children to watch --

⁷ “Eye on F.C.C., TV and Radio Watch Words,” *The New York Times*, May 10, 2004, p. A-1. Attached as Exhibit A.

⁸ Id.

⁹ Comment of Congressman Fred Upton (R-MI), *The News Hour with Jim Lehrer*, September 23, 2004, http://www.pbs.org/newshour/bb/media/july-dec04/fine_9-23.html#.

risk being left on the cutting room floor – as is happening today as a result of the Commission’s new indecency rules -- if the Commission decides to expand its regulation of program content to include both indecent programming and “excessively violent” programming.

Attached is an article written by CCVM Advisory Board Member Peggy Charren, “Government Censorship is Not the Solution, Education Is.” While this article first appeared a decade ago, it could not be more timely today.¹⁰ She writes:

“The problem, as our country has painfully learned in the past, is that a little censorship goes a long way – toward imposing someone else’s arbitrary standards on all of us, toward removing any controversial material from the public eye, and toward erasing precious First Amendment freedoms. What is a parent to do? Even parents who strongly support the principle of free speech may be hard-pressed to support its practice when it comes to shielding young people from violence and mayhem. But if censorship is not the answer, what is?

With television, as with most issues in our children’s lives, perhaps our most important role is to guide youngsters to make thoughtful choices of their own. Just as we try to teach our children the merits of good nutrition versus a diet of junk food, we can try to help them choose a “nutritious” television diet, low on “junk” and high on food for thought. We can let them know how we view violence: when we think violence is justified, when another response is more appropriate. We can point out all the disparities between violence on the screen and violence in the real world, helping them to understand that violence hurts.

For parents who decide that reasoned guidance is not enough, especially for the youngest of television watchers, there are several devices on the market that give mothers and fathers the option of blocking out programming they deem unsuitable.”¹¹

¹⁰ Hofstra Law Review, Vol. 22:863 (1994), pp. 863-9. Attached as Exhibit B.

¹¹ Id., p. 867.

Moreover, if the Commission decides to regulate program content on the grounds that violence harms children, where will it draw the line in terms of regulating content that causes other potential harm to children or society? For example, in criticizing the Commission's new "dtv.gov" website, a coalition of children's advocates and media experts wrote that, "Television is a major public health problem. It is a factor in many diseases, syndromes and unhealthy habits, including obesity, type 2 diabetes, violence, aggression, attention deficit/hyperactivity disorder, poor fitness and smoking."¹² If television is a "major public health problem,"¹³ will the Commission ultimately prohibit children from watching television at all?

Censorship should always be a very, very last resort, not a first resort. There are many far less restrictive alternatives available to the Commission to address the problem of violence on television.

EDUCATION AND EMPOWERMENT IS THE BEST SOLUTION TO THE PROBLEM OF VIOLENCE IN TELEVISION

The Commission should immediately launch a campaign to educate the public on the research that suggests that "gratuitous violence" on television harms children. This could be modeled on the campaign that the Commission is waging to educate the public

¹² "Coalition Asks Congress to Stop the FCC from Hawking Digital TV Sets," October 7, 2004, http://www.commercialalert.org/index.php/category_id/1/subcategory_id/29/article_id/274.

¹³ "Get Rid of the TV," *Business Week*, October 8, 2004, http://www.businessweek.com/bwdaily/dnflash/oct2004/nf2004108_2465_db061.htm.

about the digital television transition, “dtv.gov.” Given the Congressional and public concern over the violence on television issue, we would hope that the Commission would make the education of the public on the effect of violent content on children at least as high a priority as is the educational effort for digital TV. Then, parents can make their own choices about whether they want their children to watch television and which programs they want them to watch.

The Commission should promote “media literacy education,” which teaches critical thinking about the media and the messages it contains, as an essential part of every child’s education. It should study and consider adopting the goals of the Free Expression Policy Project’s study, “Media Literacy: An Alternative to Censorship.”¹⁴

The Commission should encourage the efforts of “Healthy Media Healthy Children,” a new group comprised of Members of Congress and private business executives. As its goal, HMHC states that “(I)n order to positively change media content by increasing availability of the healthy and reducing exposure to the harmful, Healthy Media Healthy Children aims to inform leaders of this country of research that shows the enormous impact violence in the media has on children.” HMHC further states that its goal is to “increase awareness. Our long-term goal is not censorship or finger pointing.”¹⁵

The Commission should also launch an education effort to teach consumers how to use the V chip already installed in their television sets and to utilize the ratings system.

¹⁴ “Media Literacy: An Alternative to Censorship,” published by the Free Expression Policy Project, 2nd Edition, 2003, <http://www.fepproject.org/policyreports/medialiteracy.html>.

¹⁵ Healthy Media Healthy Children policy statement. Attached as Exhibit C.

It can also facilitate an effort to improve the ratings system so that it gives consumers and parents better information about violent content.

The Commission should educate consumers about their ability, if receive their television via many cable or satellite systems, to establish “parental controls” that restrict programming of certain ratings or lock out completely certain channels or programs.

The Commission should also consider ways to educate television program creators, networks, and advertisers about the effect that “gratuitous violence” on television can potentially cause to children.

These are only a few of the ways that the Commission can use a market-based, regulation-free approach to educate and empower consumers and parents on the potential harm to children of “gratuitous violence” on television. All of these efforts can begin immediately. None of them require the Commission to enter the legal and regulatory quagmire of attempting to define precisely what constitutes prohibited “gratuitous violence.” None of them require censorship of program content, either by the Commission itself or by program creators, broadcasters, and others who will inevitably be unsure of exactly where the line between permitted and prohibited content is drawn, and therefore will “when in doubt, cut it out” to avoid a Commission enforcement action.

V. CONCLUSION

Creative media artists understand and share the Commission’s desire to address the difficult issue of whether violence in television programming causes harm to children. We have briefly described several positive steps that the Commission could undertake today that would educate and empower concerned parents and consumers who want to

avoid such programming for their children. Other commenters will no doubt suggest many other steps.

We believe each of these less restrictive steps – and more – must be tried before the Commission even considers government regulation of program content, including a so-called “safe harbor.” Government regulation of program content is censorship and will inevitably lead to further self-censorship by creative artists, networks, and others in the chain of program production and distribution. The experience of self-censorship after the Commission expanded its indecency rules proves this point.

Censorship and its unintended consequence, self-censorship, do not serve the public interest. They are a “cure” that is worse than the “disease.” They will diminish even further the creative, original, challenging, controversial, non-homogenized decent and appropriate programming which is already so scarce on television.

America’s children – as well as the rest of the American public – have a strong interest in – and a Constitutional right to -- a vibrant and diverse media. Government regulation of program content threatens television’s vibrancy and diversity. Therefore, it is not in America’s children’s interest and it is not in the public interest.

As the Commission works through these difficult issues, we invite you to call upon us, as we are ready, willing, and able to productively and meaningfully assist it in formulating a policy that addresses legitimate concerns about violent programming while not chilling free expression protected by the Constitution.

Respectfully submitted,



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EXHIBIT A

May 10, 2004

Eye on F.C.C., TV and Radio Watch Words

By JACQUES STEINBERG

The reverberations from this year's fiasco of a Super Bowl half-time show are reaching every corner of the broadcasting world, and not even the viewers of "Masterpiece Theater" are immune.

The producers of "Masterpiece Theater," intent on staying in the good graces of a Federal Communications Commission increasingly vigilant for instances of indecency, took a step last month they never had before. They chose not to make available to PBS member stations an unexpurgated version of the critically acclaimed British series "Prime Suspect," and instead sent out two edited versions: one with all of the salty language edited, and another with only some of the possibly offending words excised.

Taking similar cues from regulators, an Indianapolis radio station pre-empted words like "urinate," "damn" and "orgy" from going out over the air during a recent broadcast of Rush Limbaugh's talk show.

And classic rock radio stations have felt compelled to prune their playlists, striking songs like Elton John's "The Bitch Is Back" and "Bitch" by the Rolling Stones.

Television and radio broadcasters say they have little choice but to practice a form of self-censorship, swinging the pendulum of what they consider acceptable in the direction of extreme caution. A series of recent decisions by the F.C.C., as well as bills passed in Congress, have put them on notice that even the unintentional broadcast of something that could be considered indecent or obscene could result in stiffer fines or even the revocation of their licenses.

"If you're asking if there has been overcaution on the part of broadcasters today, I think the answer is yes," said Jeff Smulyan, the chairman and chief executive of [Emmis Communications](#), which owns 16 television stations and 27 radio stations in Chicago, Los Angeles, New York and other cities. "Everyone is going to err on the side of caution. There is too much at stake. People are just not sure what the standards really are."

The uncertainty over standards, Mr. Smulyan said, has convinced station executives to hire at least two paralegals whose responsibilities will include deleting potentially offensive material on live broadcasts before those words can be heard by the audience, using technology that delays the airing of those programs by an interval of several seconds.

Among those who will be subject to that legal backstop is the Chicago radio host known as "Mancow," who mixes celebrity interviews with racier fare.

Michael J. Copps, an F.C.C. commissioner who has been one of the strongest critics of media companies, acknowledged that some broadcasters appeared to be overreacting. But, he said, "I applaud the effort at self policing."

EXHIBIT A

He also disputed the notion that the commission's standards on indecency were too vague. "I think most of the things we're dealing with right now are pretty clear, from the standpoint of being indecent," he said. "There's enough stuff out there that shouldn't be on."

Still, Mr. Copps said that the broadcasters themselves could resolve any ambiguities they perceive by drafting and adopting what he described as a "voluntary code of broadcaster conduct."

James P. Steyer, founder and chief executive of Common Sense Media, a nonpartisan organization that advocates better programming aimed at children and families, said that "a few extreme, silly examples" of media companies being perhaps too cautious were far preferable to what he considers the "completely unregulated environment" of the recent past.

Complaints about indecency on the airwaves are not uncommon in election years, although they often grow fainter once the first Tuesday in November goes by.

This year, the exposure of Janet Jackson's right breast during a Super Bowl halftime show seen by tens of millions of viewers provided something of a gift to a Republican administration seeking to shore up its standing with conservatives, as well as with those who complain that media companies have grown large in recent years while facing little government scrutiny.

Two recent rulings by the F.C.C. have had a particularly chilling effect on broadcasters. Last month, the agency proposed levying nearly \$500,000 in fines on six radio stations owned by [Clear Channel Communications](#) for broadcasting a 20-minute snippet of Howard Stern's program dealing mostly with sexual talk. (Clear Channel has since stopped carrying Mr. Stern's program.)

And in March, the commission overturned an earlier ruling and found that NBC had violated decency standards by broadcasting a single vulgarity uttered by Bono, the lead singer of U2, during the Golden Globes in 2003.

Meanwhile, the House passed a bill in March that would increase fines on transgressing broadcasters to \$500,000 a violation, up to a maximum of \$3 million, from \$27,500 a violation.

In a petition filed last week with the F.C.C. protesting the Bono decision, PBS and its stations argued that the process of determining what might run afoul of the F.C.C. was both costly and time-consuming.

For example, on an internal Web site used by PBS executives, a station manager posed the question last month of whether WGBH, the public television station in Boston, should edit an episode of "Antiques Road Show." The station manager was worried about displaying a photograph of a nude celebrity — in this case, Marilyn Monroe, as depicted a half-century ago. It was only after reviewing and debating the footage that the show decided to let the image remain.

But in the case of "Prime Suspect," the mystery series with Helen Mirren on PBS, the producers of "Masterpiece Theater" believed that more extreme action was warranted.

In the past, "Masterpiece Theater" has occasionally sent stations two versions of an episode — one as it appeared on British television, and another that deleted a particularly strong expletive, said Rebecca Eaton, executive producer of "Masterpiece Theater."

EXHIBIT A

But in response to the recent commission rulings, Ms. Eaton said, the producers decided to create a version of last month's episode that was more heavily edited for profanity than any in the past, as well as a version that received some lighter editing.

In a petition filed last month with the F.C.C., a group representing other media organizations objected to a portion of the Bono decision in which the commission said it would now consider any use of the vulgarity in question to have a sexual connotation, regardless of the context. (Bono used that graphic expletive as an adjective in accepting an award.) That directive, the petitioners wrote, had sent radio stations scurrying to remove or edit songs with profanities that involve "neither sexual nor excretory references."

A similar scouring has been going on at WABC Radio in New York, home to a stable of politically conservative talk-show hosts — including Mr. Limbaugh and Sean Hannity. Phil Boyce, the station's program director, recently posted a sign on the control room door that urged his technicians not to resist the urge to press the so-called "dump" button, in which a host's words are pre-empted on tape delay before the audience ever hears them.

"You will never be criticized for dumping something that may not have needed to be dumped. But God forbid we miss one and let it slip up," Mr. Boyce wrote.

Last week, a WABC technician heeding that warning used the "dump" button to prevent the word "parachute" from being heard. The technician did so because a host had tripped over the second half of the word in a way that made it sound as if he had stepped in something offensive, Mr. Boyce said.

A similarly vigilant technician had his finger on the "dump" button at WIBC-AM, an Emmis station in Indianapolis, during its broadcast of Mr. Limbaugh's syndicated program on March 3 — one day after Emmis informed its employees that the broadcast of material it deemed offensive could result in their suspension or firing.

In an e-mail message to the station's program director, the assistant program director wrote that the delay was used 11 times that day for Mr. Limbaugh's program. "I can only guess we are erring on the side of safety given that I don't know of any instance a licensee has ever been fined or cited for airing Rush unedited," the assistant program director wrote, "but we'll continue to do these cuts until we're directed otherwise."

EXHIBIT B

GOVERNMENT CENSORSHIP IS NOT THE SOLUTION, EDUCATION IS

*Peggy Charren**

People generally think of me as a child advocate but, lately, I have spoken out more often as a staunch defender of free speech. This switch came about because children are being used as the excuse for censorship. Today, many child advocates, members of Congress and media regulators do not seem to understand that censorship is a slippery slide to disaster in a Constitutional democracy. For twenty-five years, I have been trying to get the Federal Communications Commission ("FCC") to fulfill its obligation to ensure that broadcast licensees obey the laws that govern broadcasting as applied to children.

The record shows that, in large part, commercial television has abdicated its educational role and concentrated on its ability to amuse. Unfortunately, it is often used to showcase violence, profane language, and sexual innuendo. Many adults, frustrated and angry with this type of television fare watched by children, want the government to ban G.I. Joe's guns and Ninja Turtles' weapons or to censor language and lyrics not suitable for young adults. During the 1970s and 1980s, the religious right and conservative Republicans tried to excise sex from the television screen. Today, Democratic members of Congress have introduced legislation designed to do away with violence on television.

But government censorship is not the way to protect children from inappropriate television. The right to express what some consider offensive speech is the price Americans pay for freedom of political speech and we cannot afford to risk losing that freedom. We have to teach our children that violence is not the solution to problems and we have to use the "off" button more often. Parents can turn off what is bad for children, but they cannot turn on what is missing from television's service to kids.

* Founder, Action for Children's Television. Editor's note: This article was originally presented at a live Symposium on Television and Violence at the Hofstra University School of Law in April 8, 1994.

EXHIBIT B

864

HOFSTRA LAW REVIEW

[Vol. 22:863]

Although the government has no place *limiting* television options, it does have a role to play in *increasing* diversity in programming. The FCC's *Children's Television Report and Policy Statement*,¹ published in 1974, emphasized that broadcasters have a special obligation to serve children and to develop and present programming which will serve the unique needs of the child audience. The FCC defined programs that could be considered educational or informative:

There are many imaginative and exciting ways in which the medium can be used to further a child's understanding of a wide range of areas: history, science, literature, the environment, drama, music, fine arts, human relations, other cultures and languages, and basic skills such as reading and mathematics which are crucial to a child's development.²

This is the statement that the FCC should be making again in 1994 and these are the ideas that broadcasters and their lawyers should keep in mind in interpreting the Children's Television Act of 1990.³

As licensed public trustees, broadcasters have historically been required to serve the public interest. The Children's Television Act breaks new ground by specifying that service to children is part of this obligation and that the child audience deserves special consideration.

Under the new law, stations must limit the amount of advertising on children's television (ten and one-half minutes per hour on week-ends and twelve minutes per hour during the week, limits many people think should be significantly lower), and must broadcast programs that meet children's educational and informational needs. The law also establishes a process by which citizens can hold local stations accountable for meeting the mandate of this law.⁴

A 1992 report by the Center for Media Education on industry compliance with the 1990 law pointed out that stations claimed the *Jetsons*, *Super Mario Brothers*, *Leave It To Beaver*, *G.I. Joe* and many similar shows were specifically designed to educate children.⁵ When I commented that "if their lawyers weren't drunk, they must be

1. In the Matter of Action for Children's Television, 50 F.C.C.2d 1 (1974).

2. *Id.*

3. 47 U.S.C. § 303a (1990).

4. *Id.*

5. Joe Flint, *Study slams broadcasters' kid act compliance*, BROADCASTING, Oct. 5, 1992, at 40; *TV broadcasters hit on children's TV programming*, COMMUNICATIONS DAILY, Sept. 30, 1992, at 2.

EXHIBIT B

865

GOVERNMENT CENSORSHIP

1994]

sick," *Time Magazine* responded, "Not necessarily. Regulators in the Reagan administration once tried to cut funds for school lunch programs by classifying catsup as a vegetable."⁶

It does seem abundantly clear that almost everyone in the commercial television business is still trying to figure out how to benefit from children, instead of how to be beneficial to children. This approach is particularly offensive given the following facts: in the United States, one in four of television's youngest viewers is poor, one in five is at risk of becoming a teenage parent, and one in seven is likely to drop out of school.⁷ Fifty percent of the children born this year will live in a single-parent family before reaching the age of eighteen.⁸ And fifty percent of the women who work full time—20 million mothers—have children under six years old.⁹

Instead of focusing on ways to evade the public interest requirements, I believe communications lawyers should urge their clients to fulfill the spirit as well as the letter of the law. Everyone understands that along with its obligations, public trusteeship confers important advantages—advantages that have consistently prompted broadcasters to reject the spectrum usage fee and to come out on the side of the trusteeship model. The issue that vexes those of us concerned with television choices is that broadcasters are not behaving like trustees when it comes to kids. Adults get much better service than young audiences do.

During the 1960s and 1970s, the FCC played a significant role in getting broadcasters to provide choices for children. Through the decade of the 1980s, however, we had to listen to the drip, drip, drip of the Reagan/Bush trickle down theory of communications: What is good for the industry is good for children! That irresponsible doctrine helped to turn commercial television programming for young audiences into thirty minute commercials that make a mockery out of the legal obligation of stations to serve the public interest.

The response of CBS is typical of what happened to kids' shows across the country, and taught me one of the most important lessons in twenty five years of trying to bring more choices to children's television: When Washington talks, broadcasters listen. During the

6. *School of Hard Knocks: Some stations have pretty liberal definitions of educational television.* TIME, Oct. 12, 1992, at 29.

7. CHILDREN'S DEFENSE FUND, THE STATE OF AMERICA'S CHILDREN (1993).

8. *Id.*

9. *Id.*

EXHIBIT B

866

HOFSTRA LAW REVIEW

[Vol. 22:863]

1970s, CBS, in response to FCC concern, hired twenty people in its news department to produce informational programs for young audiences: *In the News*, *Thirty Minutes*, *What's an Election All About*, *What's Congress All About*, as well as other specials about government followed. This was in addition to the network's *Children's Film Festival* on Saturday mornings, an hour-long show featuring children's films from around the world, and *Captain Kangaroo* which aired Monday through Friday. As soon as deregulation became the order of the day, CBS got rid of the twenty news people and canceled all these quality educational programs. In comments to the now more broadcaster friendly FCC, CBS described one of its children's shows as a program which deals with recognizable young human beings in basic situations rather than the way out world of the traditional animated cartoon. What a strange way to describe one episode I saw that dealt with the capture of a frozen caveman who later chases the main character's friends, each trying to capture the other until the caveman falls into a giant clam and is discovered to be a professor intent on stealing another scientist's invention.

Television cannot solve all of the problems of growing up poor and unskilled in America. It can certainly do its part, however, to motivate kids to learn and it can teach them a great deal about how the world works and how to participate in a democratic society. Each year, public broadcasting puts a big chunk of its meager resources into this kind of service to children. And each year, especially since 1980, broadcasters resist every attempt to get them to do likewise.

I think there is a question here that transcends the legalistic game-playing that is the focus of discussions about television's role with respect to the effects of television violence on children. It goes beyond issues about the costs broadcasters would rather not incur for programs that may win awards but may not win advertisers. The question is: "Who really cares if a generation of kids is not adequately prepared to function as effective adults?" I will remind you who cares. For starters, the CEOs of every major industrial corporation, most of whom are panicked that they cannot find workers who can read manuals, compute basic mathematical calculations or assess electronic diagrams—and right behind them are all the other people who run the country. They care that the nation might be brought to a standstill by growing population of untrained job applicants who will never be able to earn a decent salary, uninformed voters who will not be able to make sensible political decisions, and uneducated parents who will not be able to do right by their children.

EXHIBIT B

1994)

GOVERNMENT CENSORSHIP

867

Even as I talk about the need for more terrific programming for kids, I see myself as an ally of broadcasters in fiercely protecting their right to freedom of editorial speech. Action for Children's Television was the lead plaintiff in the indecency case decided recently by the U.S. Court of Appeals.¹⁰ We were on the side of the dirty words! Not only am I against the idea that television should be cleansed of "bad" programs, I do not believe concerned parents must get rid of the television set. I like television! But I believe the television industry and families have to take more seriously the challenge of managing it properly.

The violence debates usually focus on making adult television suitable for children and ignore strategies to make children's television productive for children. The problem, as our country has painfully learned in the past, is that a little censorship goes a long way—toward imposing someone else's arbitrary standards on all of us, toward removing any controversial material from the public eye, and toward erasing precious First Amendment freedoms. What is a parent to do? Even parents who strongly support the *principle* of free speech may be hard-pressed to support its *practice* when it comes to shielding young people from violence and mayhem. But if censorship is not the answer, what is?

With television, as with most issues in our children's lives, perhaps our most important role is to guide youngsters to make thoughtful choices of their own. Just as we try to teach our children the merits of good nutrition versus a diet of junk food, we can try to help them choose a "nutritious" television diet, low on "junk" and high on food for thought. We can let them know how we view violence: when we think violence is justified, when another response is more appropriate. We can point out all the disparities between violence on the screen and violence in the real world, helping them to understand that violence hurts.

For parents who decide that reasoned guidance is not enough, especially for the youngest of television watchers, there are several devices on the market that give mothers and fathers the option of blocking out programming they deem unsuitable. These devices range from key-operated safety locks that keep the television set off entirely to programmable units that can be set to block selected channels. The next step is to ensure that these options are available to all who want

10. Action for Children's Television v. FCC, 11 F.3d 170 (D.C. Cir. 1993).

EXHIBIT B

868

HOFSTRA LAW REVIEW

[Vol. 22:863]

them, at a cost all can afford. The press has smirked that such parental control devices "take the fun out of being a kid." But television would be a lot less fun for children and adults alike if every show with a shred of controversy were forced off the air by those who want to "clean up" television.

To sum up, there are a number of ways to deal with the violence in our neighborhoods, with children killing children in kindergarten, without banning television speech.

1. Congress should pass a really strong gun-control bill. Use the national focus on violence to get guns off our streets and out of the hands of children and teenagers.

2. Congress should enact legislation to fully fund day care. Young children do not watch television violence during quality child care.

3. Congress should increase funding for Public Broadcasting System ("PBS") children's programming. Public broadcasting provides access to innovative, age-specific, cost-effective educational alternatives to television violence. With its willingness to tackle hard-to-handle topics and make them understandable to children, PBS has made television learning in school and at home a high adventure.

4. Parents should turn off what is terrible and turn on what is terrific. Although some adults may wish the government would get rid of shows deemed too violent for children to see, that would be unacceptable, unconstitutional censorship. Parents who help children make informed television choices should check out imaginative alternatives available in home video.

5. Educators should teach children how television works. Young viewers can learn to analyze story lines, listen for bias, create non-violent solutions to conflict situations, discover who controls decision-making and produce their own videos.

6. Communities should organize to improve television service to children in their area. Citizens should use the requirements of the children's television legislation to remind local stations that kids are entitled to the kind of choices available in a good children's library.

7. Commercial broadcasters and cablecasters should stop promoting violent programs and movies when children are likely to be watching. Keep violent promotions and advertising off of sports programs, children's shows and situation comedies that attract young children.

8. Congress should enforce the Children's Television Act. They should make sure the Federal Communication Commission specifies minimum station service of one hour per day of regularly scheduled

EXHIBIT B

869

GOVERNMENT CENSORSHIP

1994)

children's programming specifically designed to educate.

9. Commercial broadcasters should stop undermining the Children's Television Act. The new law states that each station must carry enough educational children's programming to justify its license.¹¹ Giving children something wonderful to turn on is the better alternative to just warning parents what to turn off.

If new rules and FCC guidelines are not enough to guarantee television industry compliance with the Congressional mandate to serve children, I propose an alternative solution: The FCC should initiate the necessary steps to relieve broadcasters of their public service obligation to children and instead charge the industry a small percentage of its revenues. That money should then be allocated to the Public Broadcasting System to add money used for programs specifically designed to educate children. Fortunately PBS knows precisely what that mandate means. I believe a reasonable amount would be one hundred million dollars annually, which is less than one percent of revenues of the television broadcast industry.

As former United States Supreme Court Chief Justice Warren Burger has written:

A broadcaster seeks and is granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations. A newspaper can be operated at the whim or caprice of its owners; a broadcast station cannot.¹²

It is obvious that commercial station service to young audiences is still capricious at best. The good news is that the Clinton Administration has put the health and education at the center of its concerns. I believe that broadcasters will get the message they need to hear from this administration's FCC.

11. 47 U.S.C. § 303a (1990).

12. Office of Communication of United Church of Christ v. FCC, 359 F.2d 994, 1003 (1966) (Chief Justice Burger was then a Judge on the United States Court of Appeals for the D.C. Circuit).

EXHIBIT C

HEALTHY MEDIA HEALTHY CHILDREN

Healthy Media Healthy Children is a network of the nation's top business and opinion leaders who are committed to:



- Increasing the availability of healthy media content.
- Reducing exposure to the harmful effects of media.
- Addressing the public health impact of media content on children.

WHY?

Out of 3,500 studies, 3,482 found a positive **correlation between media violence and violent behavior**. That's a stronger correlation than that between tobacco smoke and lung cancer. That's also a **mandate for change**. Consider:

- By age 18, the average American child will have seen 200,000 acts of violence (including 18,000 murders) in the 45 hours a week they use media such as TV, video games and the Internet.
- Children between 8-18 years old spend 6 hours and 43 minutes with media each day, more time than they spend in school or with their parents.
- A National TV Violence Study (1995-97) found that 61% of all programming contained violence, and **children's programs were the most violent**.
- Research shows that media violence contributes to increased violent behavior and aggression as well as anxiety, fears and sleep disturbances. A child's exposure to media violence desensitizes him/her to real life violence, thus becoming harmful in its long-term effect.

GOALS

We seek to increase awareness. Our long-term goal is not censorship or finger pointing.

In order to positively change media content by increasing availability of the healthy and reducing exposure to the harmful, Healthy Media Healthy Children aims to inform leaders of this country of research that shows the enormous impact violence in the media has on children.

To become involved with or learn more about Healthy Media Healthy Children, please contact:

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